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December 23, 2021

**Via ECFS**

Marlene H. Dortch  
Secretary  
Office of the Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

**Re: *Submission of Confidential Information in CG Docket Nos. 10-51 & 03-123***

Dear Ms. Dortch:

Sorenson Communications, LLC (“Sorenson”) hereby submits this request for confidential treatment in connection with the attached Petition for Declaratory Ruling (“Petition”). Pursuant to Sections 0.457 and 0.459 of the Commission’s rules, Sorenson hereby requests confidential treatment of the Performance Audit Report, 2019 Cost Submission prepared by the TRS Fund Administrator, which Sorenson has included as the attachment to the Petition (“Audit Report”).

The Audit Report contains “[i]nformation submitted in connection with audits, investigations and examination of records” and therefore falls within the materials not routinely made available for public inspection under Exemption 4 of the Freedom of Information Act (“FOIA”) and the Commission’s implementing rules.<sup>1</sup> Sorenson provided to the Administrator the responses and materials reflected in the Audit Report in reliance on the Administrator’s duty of confidentiality.<sup>2</sup> In addition, the Audit Report contains commercial or financial information “of a kind that would customarily not be released to the public”; therefore, this information is “confidential” under Exemption 4 of FOIA.<sup>3</sup>

In support of this request, Sorenson hereby states as follows:

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<sup>1</sup> 47 C.F.R. § 0.457(d)(1)(iii); 5 U.S.C. § 552(b)(4); *see also* 18 U.S.C. § 1905.

<sup>2</sup> 47 C.F.R. § 64.604(c)(5)(iii)(I) (“The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission.”).

<sup>3</sup> *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

**1. Identification of Specific Information for Which Confidential Treatment Is Sought (Section 0.459(b)(1))**

Sorenson seeks confidential treatment of the Audit Report attached to the Petition.

**2. Description of the Circumstances Giving Rise to the Submission (Section 0.459(b)(2))**

Sorenson's Petition seeks a declaratory ruling that the Administrator's interpretation of the cost allocation rules is incorrect. The Audit Report provides the context and explanation of the Administrator's decision, as well as Sorenson's response to the Administrator.

**3. Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged (Section 0.459(b)(3))**

The information for which Sorenson seeks confidential treatment is confidential commercial and financial information that would customarily be guarded from competitors. The Audit Report contains information regarding Sorenson's costs, its businesses, accounting methods, and operating structure. This is sensitive commercial information that Sorenson does not make publicly available.

In addition, the Audit Report is the result of an audit proceeding, which is an "audit, investigation or examination of records" that is presumptively entitled to confidential treatment under Exemption 4 of the FOIA and 47 C.F.R. § 0.457(d)(1)(iii).

**4. Explanation of the Degree to Which the Information Concerns a Service That Is Subject to Competition (Section 0.459(b)(4))**

The markets for video relay service and Internet Protocol Captioned Telephone Service are highly competitive.

**5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))**

Disclosure of the Audit Report would cause competitive harm. Disclosure of the cost information and financial data would provide Sorenson's competitors with information about Sorenson's expenditures and operations that could provide them with a competitive advantage in the marketplace.

**6. Identification of Any Measures Taken by the Submitting Party to Prevent Unauthorized Disclosure (Section 0.459(b)(6))**

Sorenson does not distribute the Audit Report to the public, competitors, or customers. The Audit Report was marked as Confidential by the Administrator.

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**7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))**

Sorenson's Audit Report is and shall remain unavailable to the public. Sorenson has not previously disclosed the Audit Report to the public, other providers, or other unauthorized parties.

**8. Justification of the Period During Which the Submitting Party Asserts That Material Should Not Be Available for Public Disclosure (Section 0.459(b)(8))**

Sorenson requests that the Audit Report remain unavailable for public inspection indefinitely. There is no foreseeable time at which the contents of the Audit Report will no longer be confidential.

\* \* \* \*

Please be in touch if you have questions or need further information.

Sincerely,



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Encl.

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telecommunications Relay Services and	)	CG Docket No. 03-123
Speech-to-Speech Services for	)	
Individuals with Hearing and Speech	)	
Disabilities	)	
	)	
Structure and Practices of the Video Relay	)	CG Docket No. 10-51
Services Program	)	

**PETITION FOR DECLARATORY RULING**

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**I. Introduction and Summary**

Sorenson Communications, LLC (“Sorenson”) hereby requests a declaratory ruling regarding the Commission’s cost allocation methodologies for Video Relay Service (“VRS”). Sorenson routinely employs field staff to perform essential tasks that are required by the Commission’s rules and necessary to support and sustain functionally equivalent VRS. Sorenson’s field staff—typically Deaf employees—provide essential support to VRS users ranging from training new users to use VRS for the first time, assisting with required registration in the User Registration Database (“URD”), and responding to customer questions about their VRS service, whether on a videophone or an off-the-shelf device. Many of these tasks are service-related and, accordingly, are allowable costs of providing VRS.

Despite this, the Telecommunications Relay Service (“TRS”) Fund administrator, Rolka Loube (“Administrator”), has decided to interpret the Commission’s rules to treat all costs associated with field staff as disallowed, regardless of whether the cost relates to service or to customer premises equipment (“CPE”). This interpretation is inconsistent with the plain language of the rules, the Commission’s stance on allowable costs, and the Section 225 goal of functional equivalence. Sorenson therefore seeks a declaratory ruling that the Commission’s existing rules treat as allowable the costs associated with field staff to the extent that they are performing tasks that are service-related, and not equipment-related.<sup>1</sup> In addition, Sorenson

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<sup>1</sup> Sorenson has recently urged the Commission to change its rule that treats the costs associated with necessary VRS software as disallowed “CPE.” The rule dates back to policies for TTY devices, which did not require complex software to function. Modern VRS endpoints—softphone apps installed on off-the-shelf devices as well as proprietary videophones—require software and a user interface for VRS to function, and the costs associated with that software and user interface should be allowable. If the Commission makes this common-sense update to its rules, then consistent with that, the costs associated with field staff support for software and user interfaces should also be allowable. Comments of Sorenson Communications, LLC at 34-37, CG Docket Nos. 10-51 & 03-123 (filed July 29, 2021). This petition focuses on

requests confirmation that service-related field staff time is an allowable cost of providing VRS even when it is part of a longer visit during which staff may perform equipment installation and maintenance (which, under the current rules, is not an allowable cost).

## II. Background

Every February, providers of Telecommunications Relay Service (“TRS”) submit to the Administrator detailed information regarding their costs to provide TRS.<sup>2</sup> Providers’ costs must be separated into specific categories, and whenever costs relate to more than one category, they must be allocated consistent with the Commission’s rules.<sup>3</sup> The instructions for the annual submission summarize the Commission’s precedent and instruct providers how to report and allocate their costs.<sup>4</sup> While the instructions do specify that certain specific costs are or are not allowable, they also repeat the Commission’s longstanding ruling that reasonable expenses of providing eligible relay services are allowable costs.<sup>5</sup>

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allowing service-related field staff time to be treated as allowable. If the Commission changes its current policy and treats software and user interface costs as allowable, then associated field staff costs should also be allowable at that time.

<sup>2</sup> See 47 C.F.R. § 64.604(c)(5)(iii)(D).

<sup>3</sup> See *id.* § 64.604(c)(5)(iii)(D)(1) (“To the extent that a third party’s provision of services covers more than one cost category, the resubmitted cost reports must provide an explanation of how the provider determined or calculated the portion of contractual payments attributable to each cost category.”).

<sup>4</sup> See *generally* Interstate TRS Fund 2020 Annual TRS Provider Data Request Filing Instructions, attached to Comments of Rolka Loube, CG Docket Nos. 03-123 & 10-51 (filed May 25, 2021) (“2020 Filing Instructions”); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd. 20,140, 20,168-71 ¶¶ 73-82 (2007) (“2007 TRS Order”).

<sup>5</sup> 2020 Filing Instructions at 2; 2007 TRS Order at 20,144 ¶ 5, 20,148 ¶ 11.

One cost that Sorenson reports is the cost of its field staff. Field staff provide in-person<sup>6</sup> assistance to Sorenson’s VRS customers throughout the United States and perform important service-related functions that are required by the Commission and essential to ensuring functional equivalence. To start, field staff conduct essential compliance activities with respect to enrolling consumers in VRS. Per the Commission’s rules, consumers are required to review and acknowledge mandatory disclosures related to VRS; they are also required to self-certify their eligibility to participate in the TRS program.<sup>7</sup> Field staff review these materials with consumers, answer any questions they have, and assist customers with registering in the URD. Similarly, field staff help consumers set up their VRS accounts and instruct them with respect to critical tasks, like providing a Registered Location for emergency calling.<sup>8</sup> Other types of service requests that field staff respond to include requests regarding use of VRS on non-proprietary devices, porting, and training on the use of VRS, among others. All of these tasks relate to service, not equipment.

### **III. The Administrator’s Stance on Field Staff Costs Does Not Align with the Commission’s Rules or Reality**

While the Administrator is correct that, under the Commission’s existing rules, “[c]osts associated with CPE are not part of a provider’s expenses in making relay *services* available,” the Administrator goes too far treating all field staff costs as associated with CPE and therefore disallowed.<sup>9</sup> This absolutist stance does not comport with reality or the rules: as described

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<sup>6</sup> During the pandemic, some field staff work has been done remotely but is currently transitioning back to in-person.

<sup>7</sup> See 47 C.F.R. § 64.611(a)(3).

<sup>8</sup> See *id.* § 64.611(a)(4).

<sup>9</sup> See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order, 32 FCC Rcd. 5891, 5897 ¶ 12 (2017) (emphasis in



above, field staff perform certain FCC-mandated functions as well as several other functions that relate directly to the provision and use of the video relay *service*. The costs that providers incur in relation to these functions are real, reasonable, and directly in support of the service itself. Therefore, consistent with the Commission’s stance on cost recovery, they are allowable.

The Administrator’s position on field staff disregards that the Commission’s cost recovery rules allow providers to recover costs associated with employees, managers and executives that perform multiple functions as part of their jobs. The Administrator itself agrees with the basic principle that costs can be allocated across categories. This is clear from its instructions on including allowed categories and disallowed categories in the Annual TRS Provider Data Request. Sorenson simply asks that the Administrator be consistent in its interpretation of the Commission’s rules and apply the same logic to field staff costs that it applies to all others. The Commission can clarify this issue for the Administrator by granting this petition.

**A. Costs of Field Staff That Relate to Service Rather Than Equipment Are Allowable Costs of Providing VRS.**

With respect to costs attributable to relay hardware and software used by VRS consumers, it has long been the Commission’s position that installation, maintenance, and testing costs are not compensable from the TRS Fund.<sup>10</sup> However, it has equally long been the Commission’s position that most costs that directly support the provision of relay service are allowable. These run the gamut from overhead costs to start-up expenses to executive salaries

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original); Attach. at 11 (finding that Sorenson “misclassified” certain “phone installation costs” as operations support rather than CPE).

<sup>10</sup> See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Memorandum Opinion and Order, 21 FCC Rcd. 8063, 8071 ¶ 17 (2006) (“2006 MO&O”); *2007 TRS Order* at 20,170 ¶ 82.

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directly related to TRS to staffing and compensation of interpreters.<sup>11</sup> Accordingly, assistance by field staff with the use of VRS is an allowable cost. This is because, like other allowable costs, service-related field staff time is part of “[a] *providers’* expenses in making the service available and not the customer’s costs of receiving the service.”<sup>12</sup> When field staff are performing functions that support the customer’s use of VRS and not “equipment distribution, or installation of the equipment or any necessary software,” their salaries, benefits, and travel expenses are allowable costs of providing VRS.<sup>13</sup>

The Administrator is simply incorrect in classifying all costs of Sorenson field staff as “phone installation.”<sup>14</sup> Field staff perform a variety of tasks in support of the service, including training on the use of VRS. Functional equivalence demands this additional support to ensure that VRS users have adequate resources to help them navigate the user interfaces and access all the service’s features. Using VRS is more complex than hearing users’ simpler tasks of plugging a landline phone into a wall outlet or dialing from a mobile phone. Of note, users who are more likely to struggle with digital literacy (e.g., older adults) are uniquely reliant on high-quality support from field staff in their actual use of Sorenson’s service.

In its recent audit of Sorenson, the Administrator wrote that “[the Commission’s 2006] Memorandum Opinion and Order, para. 17, states that the TRS Fund should not pay for ‘the

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<sup>11</sup> See 2007 TRS Order at 20,168-70 ¶¶ 74-79. Sorenson and other providers have pointed out a few areas in which the Commission’s current rules need to be adjusted to account for actual and necessary costs of providing VRS, including the costs associated with numbering and 911, among other categories. See Reply Comments of Sorenson Communications, LLC at 15-20, CG Docket Nos. 03-123 & 10-51 (filed Aug. 13, 2021) (summarizing the broad support for treating additional essential costs as allowable costs of providing VRS).

<sup>12</sup> See 2006 MO&O at 8071 ¶ 17 (emphasis in original).

<sup>13</sup> *Id.*; see also 47 C.F.R. § 64.604(c)(5)(iii)(E)-(N).

<sup>14</sup> See Attach. at 11.

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installation of video cameras and VRS software at the customers’ premises (which includes on-site training) to ensure ‘connectivity.’”<sup>15</sup> This quotation is misleading, however, since it is not the Commission’s articulation of its own position, but rather a restatement of the Commission’s restatement of another provider’s argument. What the Commission itself says in its *MO&O* is that “[c]ompensable expenses . . . do not include expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or installation of the equipment or any necessary software.”<sup>16</sup> Nowhere in its description of excluded costs does the Commission mention on-site training, which makes sense, since training on the use of VRS is a necessary part of providing the service. Similarly, though the Administrator cites a federal court of appeals opinion in which the court states that 47 U.S.C. § 225(d)(1)(D) does not “require that VRS users receive free equipment and training,” this holding does not mandate the exclusion of costs associated with training on the use of the service from allowable provider costs.<sup>17</sup> Rather, it recognizes that the Commission may exercise discretion with respect to the allowability of costs associated with equipment and training. Sorenson clarified all of the above in its answers to the Administrator’s questions during the audit. In response, the Administrator simply restates its earlier position that all of Sorenson’s field staff costs relate to CPE, without addressing Sorenson’s response.<sup>18</sup> Where field staff perform important functions in support of VRS, the costs associated with their employment are allowable per the Commission’s existing rules.

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<sup>15</sup> See *id.*

<sup>16</sup> 2006 *MO&O* at 8071 ¶ 17.

<sup>17</sup> See Attach. at 13 (referencing *Sorenson Communications, Inc. v. FCC*, 659 F.3d 1035, 1044-45 (10<sup>th</sup> Cir. 2011)).

<sup>18</sup> See Attach. at 13.

**B. The Fact That Field Staff Perform Equipment-Related Functions in Addition to Service-Related Functions Does Not Justify Disallowing All Field Staff Expenses.**

To the extent that the Administrator believes that the costs associated with each employee or with each day's work must be associated with only one cost category, that is incorrect. Commission rules and precedent treat costs in support of service as allowable, even if they must be allocated to separate out those costs associated with CPE or other disallowed expenses. Throughout the Annual Data Reporting Forms, costs of individual departments or individual employees are allocated to multiple categories—including multiple allowable categories. For costs that straddle multiple categories—including the salaries and benefits of employee managers who oversee multiple departments, or the costs of the engineering department, which supports VRS but may also perform tasks related to CPE—providers must allocate their costs between categories using a reasonable methodology.<sup>19</sup> For example, if call center staff split time between VRS and non-TRS services, that staff time is allocated into different categories.<sup>20</sup> The substantive cost categories specified by the Administrator in its instructions do not preclude the same employees from performing different functions—in fact, they allow for this by requiring providers to submit a detailed schedule of different employees' time and allocate this time between both different activities that directly support VRS and other, unrelated activities (this latter category of data is provided for informational purposes only).

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<sup>19</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd. 12,475, 12,547-48 ¶ 189 (2004); *2007 TRS Order* at 20,170 ¶ 79, 20,169 ¶ 75 n.196; 2020 Filing Instructions at 2, 3.

<sup>20</sup> Sections B and C of the Annual TRS Provider Data Request Filing Instructions require providers to furnish the Administrator with a detailed schedule of the number of their employees, their job titles, job descriptions and the components of their compensation. Providers must submit this data for each employee classification. See 2020 Filing Instructions at 14-18.

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This cost allocation function is no different for field staff than it is for call center staff, call center managers, and others. The costs of field staff should not be considered entirely disallowed simply because field staff spend a portion of some consumer visits assisting with CPE. Indeed, Sorenson field staff managers evaluated the different tasks performed by field staff and concluded that, on average, approximately one-third of each home visit by staff is spent on tasks related to the use of VRS, as distinct from time spent on the installation and maintenance of CPE.<sup>21</sup> And Sorenson excludes from its reported allowable costs the field staff costs associated with installing, maintaining, and upgrading CPE, including support for the user interface and underlying software.<sup>22</sup> Insofar as field staff time spent supporting the use of the service can be accounted for separately from field staff time spent on CPE—which the observations above by Sorenson’s field staff managers and Sorenson’s previous data submissions demonstrate is possible—then the costs of field staff time to support service are allowable costs of providing VRS. If anything, allocating costs in this way makes particular sense in the case of field staff, because they perform numerous tasks in direct support of the service that are required by the Commission’s rules and support functional equivalence.

### IV. Conclusion

To eliminate the apparent confusion over cost allocation of field staff time, the Commission should issue a declaratory ruling stating that field staff time spent in support of service is an allowable cost of providing VRS. The existing rules and precedent treat service-

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<sup>21</sup> See Attach. at 12-13; *see also* Letter from John T. Nakahata, Counsel to Sorenson Communications, LLC to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 & 03-123, at 14-15 (highly confidential version) (filed Nov. 29, 2021) (quantifying that field staff spend only a small fraction of their time on equipment installation).

<sup>22</sup> As noted above, Sorenson is urging the Commission to change the rules regarding software costs, which are essential to VRS and should not be considered CPE. *See supra* note 1.

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related expenses as allowable—this includes the cost of field staff to the extent they perform service-related functions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John T. Nakahata', written in a cursive style.

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# **ATTACHMENT**

**[REDACTED IN ITS ENTIRETY]**